REMARKS

This is in response to the Office Action that was mailed on February 10, 2005. Applicants gratefully acknowledge the Examiner's indication of allowable subject matter in this application. Claim 17, 52, and 56 are cancelled, without prejudice. Claims 51 and 55 are amended to focus on the wood-based beads embodiments of the present invention, and to specify that they are produced by an agglomeration process, as disclosed e.g. in the second full paragraph on page 3 of the specification. New claims 57-62 correspond to former claims 51-56, but recite bead substrates no longer recited in those claims. No new matter has been added. With this Amendment, claims 1, 2, 4-7, 9-16, 18-21, 23-26, 28-41, 43-45, 47-51, 53-55, and 57-62 are pending in the application.

Applicants gratefully acknowledge a telephonic interview involving Examiner Alexander and Applicants' representative, Richard Gallagher, on May 20, 2005. During the interview, it was pointed out that former claims 51-56 have in effect been split into two parallel sets of claims, based upon the type of substrate particles recited therein. During the interview, Examiner Alexander acknowledged that the agglomeration feature (e.g. in amended claims 51 and 55) and the granulation feature (e.g. in new claim 61) appear to be significant features. It is believed that Examiner Alexander feels that such features require additional searching, inasmuch as they are not suggested by the prior art that

had been applied against claims 51-56. Applicants sincerely believe that the Examiner will find that the prior art fails to teach or suggest "the subject matter as a whole" of claims 51, 53-55, and 57-62 presented herein.

THE INVENTION. In the paragraph bridging pages 1-2 of the specification, conventional technology – including the Michael reference (US 5,468,450) – was characterized as failing to provide a satisfactory direct and efficient testing system for detecting occult blood in animal excreta.

It was indicated on page 2 of the specification that a primary object of the present invention is to provide a diagnostic tool for detecting blood in animal excreta that utilizes ***beads having a size and shape similar to that of the cat litter product***. This new technology allows for the immediate and direct detection of blood in animal excreta without any uncertainty about the reliability of the results. The detection composition used in the diagnostic beads ensures against false positive results and against color migration. Moreover, the diagnostic beads are homogeneously distributed throughout the cat litter, to ensure that each time the pet eliminates in the litter, excreta contacts the diagnostic beads.

As pointed out on page 3 of the specification, in the context of the present invention, the terminology "diagnostic beads" refer to small granule-like particles, having a diameter of 2-5 mm, that are either coated or impregnated with a detection composition for detecting blood in cat excreta. The terminology

"particulate material" herein refers to the particles or granules from which the diagnostic beads are produced. These may include wood-based beads, coated wood-based beads, "eco-granules" (a wooden based-product currently used in some cat litters, produced by Cycle Group Inc.), silica gel particles, clay beads, or any other suitable organic or inorganic particle. Methods for the preparation of beads for use as a particulate material in the present invention is disclosed in US 6,030,565, entitled "Method for Manufacturing an Agglomerate" and in US 6,572,920 B1, entitled "Method of Coating Granulated Material".

THE REJECTION. Claims 51-56 were rejected under 35 U.S.C. §103(a) as being unpatentable over US 5,468,450 (Michael) in view of US 6,376,252 (Van Lente). The rejection is respectfully traversed, for reasons including those set forth in detail in the Amendment that was filed on November 29, 2004.

On page 4 of the outstanding Office Action, the Examiner alleges the Michael "is acknowledged as teaching particles in the range of 1-40 mm" and that Applicants "characterize Michael as teach sphere shaped particles". Applicants respectfully suggest that the Examiner has misconstrued both the teaching of the Michael patent and Applicants' position with regard to that patent.

Michael does not teach the presently claimed substrate. Relevant generic disclosure that can be found in the Michael reference includes the following:

The vehicle may be any substance which can be dried and compressed,

> then rewetted and re-expanded, such as sponge grade cellulose or other resilient or fibrous materials. ... The assay vehicle may be in pieces of various sizes and shapes. One preferred format is where the dried and compressed vehicle is particulate, with particle diameters of between about 1 and 40 mm. The material may be in the form of sheets, strips, shreds, discs, other decorative shapes such as stars or animal shapes, cubes, spheres, or irregular particles, among other shapes. ... An example of this kind of material is sponge grade cellulose that is available from a variety of sources. To produce a thin compressed sheet, the cellulose may be moistened and then subjected to heat and pressure until dry. When immersed in water, it quickly returns to its precompressed dimensions. ... After drying, the sheets of cellulose or other compressed vehicle can be cut to desired sizes and shapes.

Column 1, line 66 - column 3, line 55. Applicants readily acknowledge that this generic disclosure contains the language "particle diameters of between about 1 and 40 mm" and the word "spheres". However, generic disclosure does not always "teach" everything that it says. Persons of ordinary skill in the art consider the entire disclosure of a document in order to determine what the document actually ***teaches***, in the sense of ***enables***. ***The Michael patent does not enable spherical or bead-type particles having diameters in the range 2-5 mm.***

While Michael teaches generically that the "material may be in the form of sheets, strips, shreds, discs, other decorative shapes such as stars or animal shapes, cubes, spheres, or irregular particles, among other shapes", the thrust of the Michael disclosure – that is, what Michael actually teaches – is that relatively large, flat substrates should be employed for the detection composition. Michael specifically discloses ¼ inch (6.35 mm) diameter discs or squares. Michael's One Step example uses a hole puncher to make ¼ inch

diameter discs or a strip cutter to make ¼ inch squares of its cellulose sheets. Michael's Two Step example also uses cut squares or punched discs of compressed cellulose sponge vehicle.

The secondary reference concurs in this teaching of the primary reference. Van Lente provides "test strip materials which can be subdivided into pieces". Column 2, lines 1-5. In Van Lente, "once the stripes or pieces of matrix test paper are dried, for the second dip they are then cut in sizes and shapes (diamond shape is satisfactory)". Column 4, lines 23-27.

Clearly, the suggestion – the enabled teaching – of the prior art in question is to provide relatively large, ***flat*** substrate for the detection composition. The term "bead" recited in the present claims connotes a spherical body. The prior art relied upon fails to enable or motivate persons of ordinary skill in the art to employ the small, ***spherical*** beads required by the present claims. Moreover, the thrust of the prior art disclosures is ***cutting*** to shape the substrate. In contrast, the substrates of claims 51 and 53-62 are made by ***agglomeration*** or ***granulation*** processes.

As an additional consideration, Applicants point out that claims 55, 61, and 62 are directed to ***methods*** for producing diagnostic beads having a specified small diameter by granulation or agglomeration processes. The references upon which the rejection is based fail to suggest such methods.

With respect to the Examiner's treatment of perlite, on page 3 of the Office Action, it is respectfully submitted that information alleged by an

Examiner to be "well known" in the industry but which is not supported in the record is an improper basis for finding motivation in the prior art to support a ruling of obviousness. Generalized allegations of what the skilled artisan would have been "well aware" do not satisfy the level of specificity required under the MPEP. The Examiner must point to some concrete evidence in the record, rather than relying on its assessment of what is "well recognized" or of what a skilled artisan would be "well aware." It is improper to rely upon "common knowledge and common sense" of person of ordinary skill in art to find invention obvious over combination of two prior art references. The absence any specific hint or suggestion in particular reference to support combination constitutes omission of relevant factor required by precedent. *In re Lee*, 61 USPQ2d 1430.

It is respectfully submitted that the inventions of claims 51, 53, and 55-62 cannot be found in a fair reading of the cited references. The rejection of these claims over Michael and Van Lente is manifestly based upon improper hindsight – guided by Applicants' disclosure. Withdrawal of the rejections of record is respectfully solicited.

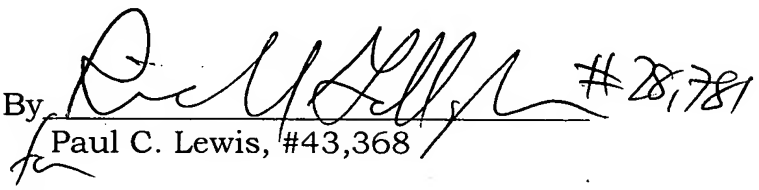
The Examiner is respectfully requested to contact Richard Gallagher (Reg. No. 28,781) at (703) 205-8008 with any questions.

If necessary, the Commissioner is hereby authorized in this, concurrent,

and future replies, to charge payment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By  #28,781
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